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TIRTHADEVA SIVAN PREMKUMAR v. PENGERUSI LEMBAGA PENCEGAHAN JENAYAH MALAYSIA & ORS

HIGH COURT MALAYA, ALOR SETAR
CHOO KAH SING JC
[CRIMINAL APPLICATION NO: 44-25-11-2015]
B 15 APRIL 2016

PREVENTIVE DETENTION: *Detention order – Validity of – Habeas corpus – Application for – Findings of inquiry officer – Whether a positive finding made pursuant to s. 10(2) of the Prevention of Crime Act 1959 ('the Act') – Prevention*
C *of Crime Board ('Board') confirmed inquiry officer's positive finding under s. 11(2)(a) – Whether mandatory requirement to serve copy of Board's decision to applicant under s. 10(4) relevant – Whether applicant deprived of right to request Board to review decision under s. 10(3)(b) – Whether there was miscarriage of justice – Whether Prevention of Crime (Advisory Board Procedure) Regulations 2014 made*
D *within powers conferred by the Act – Whether enactment of s. 19A(4) strengthens Minister's powers to make regulations – Federal Constitution, art. 151*

The applicant was arrested under s. 3(1) of the Prevention of Crime Act 1959 ('the Act'). The inquiry officer ('IO') conducted an inquiry on the arrest of the applicant and prepared a report of his finding. A copy of the IO's report
E was served to the applicant along with a Borang I which was a form for the applicant to state whether he would want to seek the Prevention of Crime Board ('the Board') to review the finding of the IO. The applicant elected not to seek the Board to review the finding of the IP and stated he was satisfied with the finding of the IO. The Board convened a meeting to review the
F finding and decision of the IO, even though the applicant did not seek the Board to do so. The Board confirmed the IO's finding in the report that there were reasonable grounds for believing the applicant was a member of one of the registrable categories stated in Part I of the First Schedule of the Act. The Board was also satisfied that a detention order requiring the applicant to be
G detained at the Pusat Pemulihan Khas for a period of two years was necessary to be issued against the applicant in the interest of public order and prevention of crime pursuant to s. 19A of the Act. The applicant filed a writ of *habeas corpus* challenging the validity of the said detention order and submitted (i) that there was non-compliance with the mandatory requirement
H of s. 10(4) of the Act; (ii) that the applicant was deprived of the right to request the Board to review the decision under s. 10(3)(b) of the Act which was a breach of s. 11(1) of the same Act; and (iii) whether the Prevention of Crime (Advisory Board Procedure) Regulations 2014 purported to have been made by the Minister under s. 23 of the Act were made within the powers conferred by the Act.

I

Held (dismissing applicant's application):

(1) Section 10(2) of the Act envisages a situation involving a positive finding of the inquiry officer right from the beginning; whereas s. 10(3)(b) envisages a situation where the negative finding of the inquiry officer has turned into a positive finding, which was a decision made by the Board. The IO's finding herein was a positive finding right from the beginning. Hence, the positive finding was made pursuant to s. 10(2) of the Act. Undoubtedly, the Board's confirmation of the IO's positive finding was not made pursuant to s. 10(3)(b) of the Act; it was made under s. 11(2)(a) of the Act. Hence, the mandatory requirement to serve a copy of the Board's decision to the applicant as stated in s. 10(4) of the Act was not relevant. Hence, the applicant's submission that he was deprived of the right to request the Board to review the decision under s. 10(3)(b) of the Act was also misplaced (paras 30-40 & 70)

(2) The Board's action in reviewing the positive finding of the IO on its own motion could not, in any way, prejudice the applicant. Instead, it had benefited the applicant as there was a check and balance accorded to the applicant even though he had elected not to seek the Board for a review of the positive finding. Where there is a non-compliance of a strict rule and it does not prejudice the person concerned, instead, it was much to the benefit of the person concerned, then there could be no miscarriage of justice (*Mohd Amin Mohd Razali & Ors v. PP & Another Appeal*). (paras 62-69)

(3) Before s. 19A(4) was inserted into the Act, there existed a general provision *ie* s. 23(1) which conferred on the Minister the power to make regulations for carrying out the purposes of the Act. This section would be sufficient to empower the Minister to make regulations, such as the 2014 Regulations. It was clearly confirmed in sub-s. (2) of s. 23 that sub-s. (1) confers general powers on the Minister to make any regulations. The general powers are wide enough to include the power to make regulations for representation to an Advisory Board. The provisions in the 2014 Regulations for representation to an Advisory Board were made in compliance with art. 151 of the Federal Constitution. The insertion of s. 19A(4) on 1 September 2015 was to include a specific provision in the Act to reflect the observance of art. 151 of the Federal Constitution. Although s. 23(1) of the Act is a general provision; it does not limit the Minister's power to make regulations for representation to the Advisory Board. The enactment of s. 19A(4) strengthens the Minister's powers to make such regulations. (paras 75-77)

Case(s) referred to:

Chow Mi Choi v. Pengerusi Lembaga Pencegahan Jenayah & Ors [2015] 6 AMR 460 ***(refd)***

Mohamad Alif Salim lwn. Pengerusi, Lembaga Pencegahan Jenayah & Yang Lain [2015] 1 LNS 1346 HC ***(refd)***

Mohd Amin Mohd Razali & Ors v. PP & Another Appeal [2003] 3 CLJ 425 FC ***(foll)***

Legislation referred to:

Federal Constitution, art. 151

Prevention of Crime Act 1959, ss. 3(1), 10(1), (2), (3)(a), (b), (4), 11(1), (2)(a), 12(1)(a), 19A(1), (4), 23(1), (2), First Schedule Part 1

For the applicant - Athimulan (K Mahendren with him); M/s Athimulan & Co
For the respondents - Lee Wai Yi; FC

Reported by Suhainah Wahiduddin

JUDGMENT

Choo Kah Sing JC:

Introduction

[1] Tirthadeva Sivan a/l Premkumar, the applicant, filed a writ of *habeas corpus* challenging the validity of a detention order dated 4 June 2015 (hereinafter referred to as 'the detention order'). The detention order was issued by the Prevention of Crime Board (hereinafter referred to as 'the Board') pursuant to s. 19A(1) of the Prevention of Crime Act 1959 (hereinafter refer to as 'the Act').

[2] The detention order requires the applicant to be detained at the Pusat Pemulihan Khas, Pokok Sena, Kedah for a period of two years effective from 4 June 2015. The Board was satisfied that the detention order was necessary to be imposed on the applicant in the interest of public order and preventing crime.

[3] On 31 March 2016, this court dismissed the applicant's application. The applicant was not satisfied with the decision. Subsequently, the applicant filed an appeal.

[4] This judgment serves as the reasons for the decision of this court. The reasons are set out as below.

Brief Facts

[5] On 8 April 2015, the applicant was arrested under s. 3(1) of the Act. On the following day, he was brought before a Magistrate. A remand order was issued by the Magistrate to detain the applicant for 21 days. A day before the expiration of the remand order, the police obtained a second remand order. The second remand order ordered the applicant to be detained for a further period of 38 days.

[6] On 5 May 2015, Aiza bin Khairuddin, the inquiry officer (hereinafter referred to as the IO) conducted an inquiry on the arrest of the applicant.

[7] On 12 May 2015, the IO prepared a report of his finding. The IO was satisfied with that there were reasonable grounds for believing the applicant was a member of one of the registrable categories stated in Part I of the First Schedule of the Act.

[8] A copy of the IO's report was served to the applicant on 13 May 2015 at 2pm. The applicant was also served with a Borang I which was a form for the applicant to state whether he would want to seek the Board to review the finding of the IO. The applicant elected not to seek the Board to review the finding of the IO. He stated he was satisfied with the finding of the IO.

[9] On 22 May 2015, a copy of the IO's report, a detailed investigation paper and the Borang I were forwarded to the Board.

[10] On 1 June 2015 the Board convened a meeting to review the finding and decision of the IO, even though the applicant did not seek the Board to review the finding of the IO.

[11] The Board confirmed the IO's finding in the report in that there were reasonable grounds for believing the applicant was a member of one of the registrable categories stated in Part I of the First Schedule of the Act.

[12] On 4 June 2015, the Board convened a second meeting. In this meeting, the Board was satisfied that a detention order was necessary to be issued against the applicant in the interest of public order and prevention of crime pursuant to s. 19A of the Act. Subsequently, on the same day, the detention order was issued by the Board.

[13] A copy of the detention order was served to the applicant on the same day around 11.45pm. On the following day the applicant was brought to the Pusat Pemulihan Khas, Pokok Sena, Kedah for detention.

The Applicant's Objection To The Detention Order

[14] The applicant's counsel raised three grounds to challenge the detention order. First, there was non-compliance with the mandatory requirement of s. 10(4) of the Act; secondly, that the applicant was deprived of the right to request the Board to review the decision under s. 10(3)(b) of the Act, and this was in breach of s. 11(1) of the same Act; thirdly, whether the Prevention of Crime (Advisory Board Procedure) Regulations 2014 purported to have been made by the Minister under s. 23 of the Act were made within the powers conferred by the Act.

A **The Findings Of This Court**

First Ground – Non-Compliance Of s. 10(4) Of The Act

[15] The applicant's counsel submitted that the Board had failed to forward a copy of its decision made under s. 10(3)(b) of the Act to the officer having
B custody of the applicant which in turn led to the failure to serve the decision of the Board to the applicant.

[16] The applicant's counsel further submitted that if the Board had made a decision under s. 10(3)(b) of the Act, then it is mandatory for a copy of the decision to be served to the applicant. This is a mandatory procedural
C requirement pursuant to s. 10(4) of the Act. The failure to comply with s. 10(4) of the Act was fatal, the applicant's counsel argued.

[17] In order to appreciate the applicant's counsel's argument, s. 10 of the Act is recited below, and it states as follows:

D Section 10

(1) If the Inquiry Officer is satisfied that there are no sufficient grounds for believing that the person who was the subject of the inquiry is a member of any of the registrable categories, he shall report his finding, together with his reasons for it, to the Board, and shall forward a copy of his finding to the officer having custody of the person, who shall
E forthwith serve a copy of the finding of the Inquiry Officer on that person.

(2) If the Inquiry Officer is satisfied that there are reasonable grounds for believing that the person who was the subject of the inquiry is a member of any of the registrable categories, he shall report the grounds, together with his finding, to the Board, and shall forward a copy of his finding to
F the officer having custody of the person, who shall forthwith serve a copy of the finding of the Inquiry Officer on that person.

(3) Whenever the Board, after considering the finding of the Inquiry Officer submitted under subsection (1), is satisfied with respect to any person that:

G (a) there are no sufficient grounds for believing that the person is a member of any of the registrable categories, the Board shall forthwith direct any person having the custody of that person, within twenty-four hours of the receipt of the direction, to produce the person before a Sessions Court Judge, who shall thereupon discharge the order of remand made under section 4 and, if there
H are no other grounds on which the person is lawfully detained, shall order his immediate release;

(b) based on the Inquiry Officer's finding there are sufficient grounds for believing that the person is a member of any of the registrable categories, the Board shall proceed in accordance with
I Parts III, IV and IVA of this Act.

(4) If the Board makes a decision under paragraph (3)(b), it shall forward a copy of its decision to the officer having custody of the person, who shall forthwith serve a copy of the decision of the Board on that person.

[18] Section 10(4) of the Act states with precision that the Board's decision has to be served to the person in question, if the Board's decision is made pursuant to s. 10(3)(b) of the Act.

[19] As far as the reading and interpretation of s. 10(4) of the Act are concerned, this court fully agreed with the applicant's counsel that a copy of the Board's decision had to be served to the person in question, if the board's decision is made pursuant to s. 10(3)(b) of the Act.

[20] Unfortunately, in this instant case, the Board's decision was not made under s. 10(3)(b) of the Act. The Board's decision was made under s. 11(2)(a) of the Act, and it will be explained below as to why it was made under that section.

[21] To begin with, s. 10(3)(b) must be read in light with s. 10(1) of the Act. This is so because s. 10(3) begins with the following wording:

> 10(3) Whenever the Board, after considering the finding of the Inquiry Officer submitted under subsection (1), is satisfied with respect to any person that ...

[22] And, sub-s. (1) which is referred to in s. 10(3) reads as follows:

> 10(1) If the Inquiry Officer is satisfied that there are no sufficient grounds for believing that the person who was the subject of the inquiry is a member of any of the registrable categories, he shall report his finding, together with his reasons for it, to the Board, and shall forward a copy of his finding to the officer having custody of the person, who shall forthwith serve a copy of the finding of the Inquiry Officer on that person.

[23] Section 10(1) of the Act envisages a negative finding by the inquiry officer. Section 10(3) makes specific reference to a negative finding made pursuant to s. 10(1). It follows that s. 10(3)(a) and 10(3)(b) apply in a situation where there is a negative finding made by the inquiry officer.

[24] There are two scenarios which could happen when the Board reviews a negative finding by the inquiry officer.

[25] The first scenario is envisaged in s. 10(3)(a). This is when the Board, after having considered the negative finding, finds there are no sufficient grounds for believing that the person is a member of any of the registrable categories. In other words, the Board confirms the negative finding. The person concerned shall be released.

[26] The second scenario is envisaged in s. 10(3)(b). This is when the Board after having considered the negative finding, finds there are sufficient grounds for believing that the person is a member of any of the registrable categories. In other words, the Board could not agree with the negative finding by the inquiry officer. The negative finding has now become a positive finding by the Board.

[27] If the Board reverses a negative finding, and makes a positive finding pursuant to s. 10(3)(b), it follows that a copy of the decision of the Board's positive finding shall be delivered to the person concerned. This is required under s. 10(4) of the Act.

[28] The serving of a copy of the Board's positive finding to the person concerned is a mandatory procedural requirement. This is because the person concerned is now given an opportunity to seek the Board to review its own decision for the second time. In other words, it is to seek the Board to reconsider its positive finding after the inquiry officer had first made a negative finding.

[29] The above interpretation of the entire s. 10 of the Act could be bolstered by referring to s. 11 of the Act, where it states as follows:

> Section 11
>
> (1) Any person who was the subject of an inquiry who is dissatisfied with any finding made under subsection 10(2) or decision under paragraph 10(3)(b) may within fourteen days of the service thereunder of the copy of the finding or decision on him by notice in writing request the Board to review the finding or decision.
>
> (2) The Board shall, upon making any review under subsection (1), and after considering the advice of a law officer thereon:
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> (a) confirm the finding made under subsection 10(2) or decision under paragraph 10(3)(b); or
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> (b) reverse the finding or decision:
>
> Provided that if the Board reverses any such finding or decision, and the person who made the request is still in custody, the Board shall within twenty-four hours of its decision direct the person to be taken before a Sessions Court Judge, who shall thereupon discharge the order of remand and, if there are no other grounds on which the person is lawfully detained, shall order his immediate release.

[30] Section 10(2) of the Act envisages a situation involving a positive finding of the inquiry officer right from the beginning; whereas, s. 10(3)(b) envisages a situation where the negative finding of the inquiry officer has turned into a positive finding, which is a decision made by the Board.

[31] Parliament had used the term "finding" in reference to s. 10(2); and the term "decision" in reference to s. 10(3)(b). Clearly, there is a distinction between "finding made under sub-s. 10(2)" and a "decision under s. 10(3)(b)". The former refers to the positive finding made by the inquiry officer; whereas, the latter refers to a decision made by the Board, ie a decision to reverse a negative finding and make a positive finding.

[32] In either of the situations above, the person concerned shall be served with a copy of the report or decision of the positive finding, together with a Borang I. This requirement is stated clearly in s. 10(2) and s. 10(4) of the Act, whichever is applicable.

[33] The Borang I is for the person concerned, within 14 days upon receipt of the inquiry officer's report or the Board's decision of a positive finding, to seek the Board to review the positive finding under s. 11 of the Act. Section 11(1) of the Act has encapsulated these two situations clearly.

[34] Coming back to the facts of this instant case, the IO's finding was a positive finding right from the beginning. Hence, the positive finding was made pursuant to s. 10(2) of the Act; it was not made pursuant to s. 10(3)(b) of the Act as submitted by the applicant's counsel.

[35] On 13 May 2015, a copy of the IO's report was served to the applicant notifying him of the positive finding, *viz* pursuant to s. 10(2) of the Act. The applicant was also served with a Borang I. The applicant elected not to seek the Board to review the positive finding of the IO. He was satisfied with the positive finding of the IO.

[36] On 1 June 2015, the Board convened a meeting to review the positive finding of the IO, even though the applicant did not seek the Board to review the positive finding of the IO. The Board took upon itself to review the positive finding of the IO, after having receipt from the IO the report and his findings.

[37] The review by the Board of the IO's positive finding was not made pursuant to s. 10(3)(b) of the Act.

[38] The Board's finding and confirming the IO's positive finding was in fact an exercise carried out pursuant to s. 11(2)(a) of the Act.

[39] Section 11(2)(a) of the Act states as follows:

> (2) The Board shall, upon making any review under subsection (1), and after considering the advice of a law officer thereon:
>
> (a) confirm the finding made under subsection 10(2) or decision under paragraph 10(3)(b); or ...

[40] Undoubtedly, the Board's confirmation of the IO's positive finding was not made pursuant to s. 10(3)(b) of the Act. The Board's confirmation of the IO's positive finding was made under s. 11(2)(a) of the Act. Hence, the mandatory requirement to serve a copy of the Board's decision to the applicant as stated in s. 10(4) of the Act is not relevant.

[41] The argument raised by the applicant's counsel that the failure of the Board to serve its decision to the applicant is fatal because it is mandatory pursuant to s. 10(4) of the Act was misconceived on this given set of facts in this instant case.

[42] I observed that the applicant's counsel has misread the provision of s. 10(3)(a) of the Act. The applicant's counsel took the view that s. 10(3)(a) of the Act referred to a situation where the Board confirmed the inquiry officer's positive finding pursuant to s. 10(2) of the Act. I could not agree with the applicant's counsel's reading of the provision.

[43] Section 10(3)(b) is a sub-section of s. 10(3), where s. 10(3) clearly refers to the inquiry officer's negative finding under s. 10(1), not a positive finding under s. 10(2) of the Act.

[44] Section 10(3)(a) and 10(3)(b) have to be read within the context stated in s. 10(1) of the Act, ie a negative finding of the inquiry officer. In an unreported case of *Mohamad Alif Salim lwn. Pengerusi, Lembaga Pencegahan Jenayah & Yang Lain* [2015] 1 LNS 1346, paras. 36-41, wherein the learned High Court Judge of Alor Setar, Kedah, also made a similar finding that s. 10(3)(b) has to be read in the context of a negative finding, ie a negative finding pursuant to s. 10(1) of the Act.

[45] However, the High Court's decision in the case of *Chow Mi Choi v. Pengerusi Lembaga Pencegahan Jenayah & 4 Ors* [2015] 6 AMR 460, the learned Judicial Commissioner in his judgment stated at p. 468 as follows:

> [26] Upon the plain reading of the relevant provisions of the Act, it appears that in the case of a person whom there are reasonable grounds for believing is a member of any of the registrable categories, the appropriate chronology of steps to be taken are as follows.
>
> [27] Section 10(2) requires the inquiry officer who is satisfied that there are reasonable grounds for believing that the person who was the subject of the inquiry is a member of any of the registrable categories to report the grounds, together with his finding to the board, and shall forward a copy of his finding to the officer having custody of the person, who shall forthwith serve a copy of the finding of the inquiry officer on that person.
>
> [28] Next, s. 10(3) states that whenever the board, after considering the finding of the inquiry officer is satisfied that pursuant to s. 10(3)(b), based on the inquiry officer's findings there are sufficient grounds for believing that the person is a member of any of the registrable categories, the board shall proceed in accordance with Parts III, IV and IVA of the Act.
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> [29] Following this, s. 11(2) requires the board, upon reviewing any decision or finding made under subsection 10(2) or decision under paragraph 10(3)(b) to either confirm the finding made under subsection 10(2) or decision under paragraph 10(3)(b) or reverse the finding or decision as the case may be.
>
> [30] As the applicant here did not request for a review, the provisions of s. 11 has no application. Therefore, the next step after 10(3)(b) in a case where there is no review is that the board shall proceed in accordance with Parts III, IV and IVA of the Act.

[46] With due respect to my learned brother in *Chow Mi Choi*, I beg to differ from his reading of what should happen next when there is a positive finding of an inquiry officer, ie s. 10(2) of the Act.

[47] I am of the view that if there is a positive finding by the inquiry officer, ie pursuant to s. 10(2) of the Act, other than serving a copy of his positive finding report to the Board and serving a copy of the same to the person concerned, two scenarios could occur.

[48] First, if the person concerned chooses to seek the Board to review the positive finding, the Board shall review the positive finding under s. 11(1) of the Act.

[49] Secondly, if the person concerned elects not to seek the Board to review the positive finding, the inquiry officer could report the person's name to the Registrar to be registered in the Register. This is provided under s. 12(1) of the Act. Section 12(1) states as follows:

> 12. Registration of persons believed to be members of any of the registrable categories
>
> (1) The Registrar shall keep a Register for the purposes of this Act, in which shall be entered the name of every person:
>
> (a) who is reported by an Inquiry Officer to be a person in respect of whom there are reasonable grounds for believing that he is a member of any of the registrable categories; and
>
> (b) who has not requested any review under section 11, or in respect of whom the Board has confirmed the finding made under subsection 10(2), or made or confirmed the decision under paragraph 10(3)(b);
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> together with such other particulars as may be prescribed.

[50] Section 12 of the Act envisages three scenarios where a person's name could be registered in the Register by an inquiry officer.

[51] First, where there is a positive finding made by the inquiry officer under s. 10(2), and the person concerned did not seek the Board to review the positive finding. The inquiry officer could then through the Registrar register the person's name in the Register.

[52] Secondly, where there is a positive finding by the inquiry officer under s. 10(2), and the person concerned sought the Board to review the positive finding pursuant to s. 11, and subsequently, the Board confirms the positive finding made under s. 10(2).

[53] Lastly, where there is a negative finding by the inquiry officer under s. 10(1), and the Board reverses the inquiry officer's negative finding, and a review is sought, and the Board confirms its decision of a positive finding made under s. 10(3)(b).

[54] The wording in s. 12(1)(a) refers to a positive finding of an inquiry officer. It then follows with three scenarios, as explained above.

[55] Based on the above analysis and the plain reading of ss. 10, 11 and 12, it would not make sense for Parliament to offer two opportunities to the person concerned to seek the Board to review the positive finding made by the inquiry officer – one at the stage where a positive finding made by the inquiry officer pursuant to s. 10(2), and the other one where the positive finding is confirmed by the Board pursuant to s. 10(3)(b) of the Act as explained in *Chow Mi Choi*.

[56] If the reading of 10(3)(b) in the case of *Chow Mi Choi* is correct, then Parliament would have stated in s. 10(3) the following words:

> Whenever the Board, after considering the finding of the Inquiry Officer submitted under sub-s. (1) or (2), is satisfied with respect to any person that ...

[57] I am of the considered view that the sub-s. 2 was intentionally left out. This is because if there is a positive finding made pursuant to s. 10(2), the opportunity for the person concerned to seek the Board to review the positive finding has already been provided for in s. 11(1) of the Act.

[58] Section 11(1) has already covered the above situation where it states:

> Any person who was the subject of an inquiry who is dissatisfied with any finding made under subsection 10(2) ... may within fourteen days of the service thereunder of the copy of the finding ... on him by notice in writing request the Board to review the finding ...

[59] It makes sense to require the Board to serve a decision of the board to the person concerned pursuant to s. 10(4) when the Board has reversed a negative finding made by the inquiry officer. The service of the Board's decision of a positive finding will now allow the person concerned the opportunity to seek the Board to review the positive finding.

[60] The above situation has also been provided for in s. 11(1) where it states:

> Any person who was the subject of an inquiry who is dissatisfied with any finding made under ... or decision under paragraph 10(3)(b) may within fourteen days of the service thereunder of the copy of the ... or decision on him by notice in writing request the Board to review the ... or decision.

[61] The wording of s. 11(1) clearly provides two distinct situations in which the person concerned could seek the Board to review a positive finding.

The Board On Its Own Initiative Reviewed The Positive Finding

[62] I noted in this case, the Board had on its own initiative reviewed the IO's finding on 1 June 2015, even though the applicant did not seek the Board to review the IO's finding. The Board confirmed the IO's finding pursuant to s. 11(2)(a) of the Act.

[63] This court raised a question for counsel to submit: Whether the Prevention of Crime Board can on its own motion invoke s. 11 of the Act to review the finding of the inquiry officer under s. 10(2) of the Act when the applicant did not request for a review under s. 11(1) of the Act?

[64] The respondents' counsel submitted that there was a letter dated 20 April 2015 sent by a firm of solicitors Tetuan Naga & Associates representing the applicant to seek the Board to review the finding of the inquiry officer. The letter was sent before the IO made his positive finding. That letter was sufficient to constitute a request for a review pursuant to s. 11(1) of the Act, the respondents' counsel said.

[65] I could not agree with the submission of the respondents' counsel. There is no provision in the Act which permits an applicant to request a review of the finding of an inquiry officer before the inquiry officer makes a finding. This is like putting a cart before the horse. On this ground alone, the submission of the respondents' counsel could not hold water.

[66] However, I am inclined to adopt and follow the principle as laid down in the Federal Court's decision in the case of *Mohd Amin Mohd Razali & Ors v. PP & Another Appeal* [2003] 3 CLJ 425, where it stated that when a strict rule that has been laid down in the law is not strictly applied, but it caused no prejudice whatsoever to the person concerned and in fact much to the benefit of the person concerned, the failure to adhere to the rule should not vitiate the proceedings (see p. 438 – paras. f to i; pp. 439-440 – paras. a and b of the judgment of His Lordship Steve Shim CJ (Sabah and Sarawak) (as he then was)).

[67] In other words, when there is a non-compliance of a strict rule and it does not prejudice the person concerned, instead, it is much to the benefit of the person concerned, then, there could be no miscarriage of justice.

[68] Although the case of *Mohd Amin Mohd Razali* does not involve a writ of *habeas corpus*; I am of the considered view that the principle laid down by the Federal Court is not limited to any particular area of criminal law but is a principle of general application.

[69] The Board's action, ie reviewing the positive finding of the IO on its own motion, could not in any way prejudice the applicant, instead it had benefited the applicant. At the least, there was a check and balance accorded to the applicant even though he had elected not to seek the Board for a review of the positive finding. I could not see any miscarriage of justice.

Second Ground: The Applicant Was Deprived Of The Right To Request The Board To Review The Decision Under s. 10(3)(B) Of The Act, And Thus, It Breached s. 11(1) Of The Same Act

[70] The argument in this second ground flows from the first ground. As stated above, the Board did not review the positive finding of the IO pursuant to s. 10(3)(b) of the Act, instead its decision was made under s. 11(2)(a) of the Act. Hence, this argument is misplaced.

Third Ground: Whether The Prevention Of Crime (Advisory Board Procedure) Regulations 2014 Purporting To Have Been Made By The Minister Under s. 23 Of The Act Were Within The Powers Conferred By The Act

[71] The argument of the applicant's counsel was that when the regulations were made in 2014, there was no provision in the parent law, ie the Act, for the Minister to make such regulations, in particular, the provision for representation to the Advisory Board. It was only in September 2015 that Parliament amended the Act and inserted s. 19A(4) introducing provision for representation to the Advisory Board.

[72] Section 19A(4) states as follows:

> A copy of every detention order made by the Board under subsection (1) shall as soon as may be after the making of the order be served on the person to whom it relates, and every such person shall be entitled to make representation to an Advisory Board constituted under Clause (2) of Article 151 of the Federal Constitution in accordance with the prescribed procedures.

[73] The above amendment was made through the Prevention of Crime (Amendment) Act 2015 (Act A1484); the above provision was inserted in the Act and it took effect on 1 September 2015.

[74] The respondents' counsel urged this court to refer to s. 23(1) of the Act which states as follows:

> (1) The Minister may make regulations for carrying out the purposes of this Act.
>
> (2) Without prejudice to the generality of the powers conferred by subsection (1), the regulations may:
>
> (a) ...;
>
> (b) ...
>
> (ba) ...;
>
> (c) ... .
>
> (3) ... .

[75] Before s. 19A(4) was inserted into the Act, there existed a general provision, ie s. 23(1), which conferred on the Minister the power to make regulations for carrying out the purposes of the Act. This section would, in my opinion, be sufficient to empower the Minister to make regulations, such as the 2014 Regulations.

[76] It is clearly confirmed in sub-s. (2) of s. 23 that sub-s. (1) confers general powers on the Minister to make any regulations. These general powers are wide enough to include the power to make regulations for representation to an Advisory Board. The provisions in the 2014 Regulations for representation to an Advisory Board were made in compliance with art. 151 of the Federal Constitution.

[77] The insertion of s. 19A(4) on 1 September 2015 was to include a specific provision in the Act to reflect the observance of art. 151 of the Federal Constitution. Although s. 23(1) of the Act is a general provision; it does not limit the Minister's power to make regulations for representation to the Advisory Board. The enactment of s. 19A(4) strengthens the Minister's powers to make such regulations.

Conclusion

[78] Based on the above analysis, I was not convinced the grounds submitted by the applicant's counsel could accord the applicant a writ of *habeas corpus*. Hence, I dismissed the applicant's application on 31 March 2016.